

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MAUD MORRISON,

Plaintiff,

v.

CASCADE COUNTY SCHOOL DISTRICT
#5, CENTERVILLE PUBLIC SCHOOLS:
THE BOARD OF TRUSTEES OF CASCADE
COUNTY SCHOOL DISTRICT #5, CENTER-
VILLE SCHOOLS: WILLIAM CORCORAN,
DUANE E. KNOX, ALLAN FRANCETICH,
RONALD GUISTI, ROBERT VAN VLEET,
and JOE "BUD" MAURER, both indiv-
idually and also in their official
capacity as Members of said BOARD
OF TRUSTEES; and ROBERT G. KINNA,
both individually and also in his
official capacity as Centerville
Public School Superintendent,

Defendant.

No. CV 74-15-GF

OPINION AND ORDER

Plaintiff was employed as a fifth grade teacher by Cascade County School District No. 5 in its Centerville School, a combined high school and grade school, for the school year 1970-1971. During the first year of teaching, plaintiff had some troubles with students and their parents, and in one instance slapped a student and repeated the slap with the student's mother, who came to school to discuss the matter. At the end of the school year the School Board decided not to rehire plaintiff, but on the recommendation of Superintendent Kinna, reconsidered, and plaintiff was ultimately awarded a contract for the school year 1971-1972.

In the second year of her employment the troubles plaintiff had had with students did not reoccur, and the evidence is that she was a competent teacher who maintained good relationships with the students and with most of her fellow teachers. A number of them described her as a "morale-builder."

Plaintiff was not offered a contract for the school year 1972-1973. She demanded the reasons for the refusal and was advised by letter as follows:

Dear Mrs. Morrison:

As per your request please find enumerated below the reasons for your non-employment for the 1972-73 school year.

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We feel that Mrs. Morrison has been a contributing factor in creating and maintaining a feeling of dissension and ill-feeling among the school staff members and administration.

A certain amount of agitation was prevalent during the 1970-71 school year, but overshadowed by the constant parental complaints being lodged with the Supt. and the Board of Trustees.

A certain division exists between the elementary and high school staff and we feel that Mrs. Morrison has been instrumental in thwarting efforts to seal this division.

Mrs. Morrison seems to cause dissension and ill-feeling among teachers and supervisors by over-reacting to certain situations and because of over-reacting makes crude and offensive remarks. Specific instances would include staff meetings concerning selection of a Group Health Insurance Plan.

These shortcomings were brought to Mrs. Morrison's attention Jan. 19, 1972 by means of an Evaluation Report for Probationary Teachers dated December 28, 1971.

Because of these reasons we have decided not to renew Mrs. Morrison's contract for the coming year.

Sincerely,

/s/ Alan E. Francetich
Alan Francetich, Chairman ¹

Plaintiff demanded a hearing and was heard by the Board in a closed session in which the plaintiff spoke in her own behalf. No evidence was offered by the school administration.

1. The evidence at this trial does not support the statement that plaintiff thwarted efforts to seal a division between the high school and elementary school faculties. There was evidence to support the matter of parental complaints in 1971-1972, and at least in one instance the statement relating to ill feeling between teachers and supervisors is supported by evidence. The extent to which these statements were proved is important only as it bears upon the states of mind involved, because the Board did not need a reason not to renew.

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The School Board reaffirmed its prior action. An appeal was taken to the County Superintendent of Schools who, after a full evidentiary hearing, denied plaintiff any relief. A further appeal to the State Superintendent of Schools was unproductive, and plaintiff brought this action.

In the school year 1971-1972 a personality conflict developed between the plaintiff and the Superintendent. The faculty was divided on the selection of an insurance carrier for the teachers' health insurance program. Plaintiff and some others favored Horace Mann while the Superintendent and others favored Prudential. On a vote at a staff meeting Horace Mann won faculty approval. The Superintendent called another staff meeting and the matter was again put to a vote, and on this vote Prudential was approved. Plaintiff was upset that the matter was reopened and the result changed, and she spoke firmly on the merits. After the staff meeting had concluded a Montana Education Association (MEA) meeting was assembled. During the course of that meeting and in response to the Superintendent's statement that the Vice President of the MEA was the program chairman, the plaintiff said, "The lord hath spoken." This remark embarrassed the assembly. The Superintendent greatly resented it.

Two other issues were of concern to the teachers during the 1971-1972 school year. Some teachers did not want to eat in the cafeteria with students during the lunch period. Some elementary teachers wanted a free period during the day within which to prepare for classes. These matters were discussed in staff meetings and plaintiff, who favored both the duty-free lunch period and the free preparation period, discussed these matters at staff meetings and with other teachers out of staff meetings. The Superintendent considered these out-of-staff meetings discussions disruptive.

In the year 1971-1972 an obligation to bargain collectively with teacher representatives was imposed upon Montana school boards. R.C.M. 1947 §§ 75-6115 - 6128. Plaintiff was chosen as a member of the negotiating team for the Centerville School. The issues of the duty-free lunch period and the free preparation period, among others, were discussed at the negotiating meetings. The Board and the teachers could not resolve their disputes. The state representatives of MEA entered the picture. Lawsuits against the Board were threatened. The bargaining reached an impasse and went to professional negotiation. R.C.M. 1947 § 75-6123. While there was no evidence of any personal hostility in the negotiating sessions, and while the members of the Board denied that plaintiff's part in the collective bargaining influenced their judgment, there is no doubt but that the whole matter of the negotiations created tensions in the entire system and the negotiations did, in my opinion, influence the Board's attitude toward plaintiff.

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The teachers' negotiating team consisted of three negotiators and a secretary. Two of the negotiators and the secretary, all of whom were nontenured teachers, did not get contracts for the year 1971-1972. I find, however, that, except for the recommendations made by the Superintendent, the Board would not have refused to renew on the basis of plaintiff's participation in the negotiations alone.

I conclude from all of this, including close observation of both plaintiff and Superintendent Kinna as they testified, that the real cause of plaintiff's trouble was the unpleasant relationship existing between her and Superintendent Kinna. This in turn was caused by plaintiff's occasionally abrasive manner and Superintendent Kinna's overreaction to it. These conflicts did, however, develop out of plaintiff's undoubted right to discuss at staff meetings and elsewhere issues of concern to teachers. In short, it was plaintiff's exercise of first amendment rights in a manner displeasing to the Superintendent that resulted in her failure to get a contract for the school year 1972-1973. The School Board acted on the recommendation of the Superintendent without making any independent investigations or evaluations. I find that the refusal to renew was inextricably entwined in plaintiff's exercise of protected rights.

When a refusal to grant a contract to a nontenured teacher is based in whole (Perry v. Sindermann, 408 U.S. 593 (1972) or in substantial part (Starsky v. Williams, 353 F.Supp.900 (D. Ariz. 1972), aff'd ___ F.2d ___ (9th Cir. No. 73-1520, Feb. 26, 1975)) upon the teacher's exercise of protected rights, the refusal is unlawful and the teacher has a remedy. 42 U.S.C. §§ 1981-85.

I have in mind the interests of society in the vindication of first amendment rights, the interest of the plaintiff, and the interests of the school, and I conclude that plaintiff should be awarded damages and attorney's fees, but should not be ordered reinstated.

A judgment with attorney's fees will serve to notify this and other school boards of first amendment rights of non-tenured teachers and of the potential hazards involved in the abridgment of those rights.

The plaintiff lost her third-year contract and the chance during that year to convince the Board that she should be awarded a fourth contract and gain permanent tenure. It cannot be known whether she would have been hired in the fourth year. In her first two years of teaching plaintiff had done things which would have provided the Board with a reason, and perhaps a just cause, had they needed one, for discharging her. Had the Board refused a fourth-year

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contract, plaintiff, proceeding on a sort of the-fruit-of-the-poisoned-tree theory, might have filed another action such as this, claiming that the reasons for the nonrenewal in 1972-1973 persisted and hence a nonrenewal in 1974-1975 was impermissible. That lawsuit might have been successful. The entire matter is, however, speculative, and after balancing plaintiff's conduct during the two years, the defendants' conduct, and the Montana policy of a three-year probationary period in which a teacher has no entitlements, I conclude that reinstatement should not be ordered in this case. See Burton v. Cascade School District Union High School, ____ F.2d ____ (9th Cir., No. 73-1568, March 28, 1975.)

IT IS THEREFORE ORDERED that plaintiff have judgment against the defendant for damages in the sum of Seven Thousand Eight Hundred Sixty-four Dollars (\$7,864.00),² for her reasonable attorney's fees³ in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), and for her costs, and that plaintiff be denied any other relief.

This opinion constitutes the court's findings of fact and conclusions of law.

Plaintiff will prepare a judgment in accordance with Rule 14(b) of the rules of this court.

DATED this 1st day of May 1975.

/s/ Russel E. Smith
Russell E. Smith
United States District Judge

2. This is the salary which would have been earned under the 1971-1972 contract, undiminished by reason of plaintiff's earnings during the school year 1972-1973.

3. Attorney's fees are awarded for services rendered in this case and not for services rendered in pursuit of administrative remedies.